

RESPONSE REMARKS

The Telephonic Interview between the below-signed attorney-of-record, Marilyn R. Khorsandi, and Examiner Gray on March 12, 2007 is gratefully acknowledged with appreciation. As required by the rules, it is respectfully submitted that the substance of the interview is included in the substance of the amendments to the Claims and in the substance of the below-given Response and Remarks.

It is noted that to facilitate the March 12, 2007 telephone interview, the below-signed attorney-of record provided to the Examiner, proposed Claim amendments to independent Claims 1, 8, 9 and 16 and proposed new Claim 23. The telephone interview was conducted with reference to the proposed Claim amendments, the references cited in the Office Action, and the specification, drawings and Claims of the present application.

In the March 12, 2007 telephone interview, although no final agreement was reached for allowable claim language, the Examiner indicated that the combination of limitations recited by some of the amended and new claims appeared to be distinguishable from the previously cited references; the Examiner indicated that final consideration of the amended and new claims would be subject to a final search and analysis.

The interview with the Examiner has been fully considered. Some of the previously proposed Claim amendments have been revised.

CLAIM REJECTIONS UNDER §103(a)

In the Office Action, Claims 1-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gawlik et al. (U.S. Patent No. 4,807,837; "Gawlik") in view of McGaha (U.S. Patent No. 4,114,273, "McGaha") and further in view of Eidem (U.S. Patent No. 4,832,294; "Eidem").

RESPONSIVE REMARKS REGARDING CLAIM REJECTIONS UNDER §103(a)

The rejections have been carefully considered. Without waiving rights to argue to the contrary of the rejections under Section 103(a), independent Claims 1, 8, 9 and 16 and dependent Claims 4, 5, and 10 have been amended to more distinctly claim the

claimed invention; Claims 2-3, 6-7 and 17 have been cancelled. New dependent Claim 23 has been added.

For the reasons give below, it is respectfully asserted that amended Independent Claims 1, 8, 9 and 16, and therefore the Claims dependent on them (namely, Claims 4-5, 10-15 and 18-23), are novel and non-obvious in view of, and are patentably distinct from, the references of record, even when combined.

In rejecting Claims 1-22, the Office Action cited McGaha Figures 1, 2 and 6, and stated that "McGaha discloses a lockable extension-retraction tube-winding device" As indicated in, e.g., its Figure 2, McGaha discloses a "... selectively operable extending and retracting mechanism, generally indicated at 30 ..." McGaha, col. 5, lines 38-40. McGaha discloses that the extending and retracting mechanism 30 "... is responsive to movement of the respective handpiece instrument 20 and connected hose 21 from the retracted position to a desired extended position ..." McGaha, col. 5, lines 39-42. McGaha further discloses that "[e]ach of these extending and retracting mechanisms 30 include a moveable pulley 32 positioned for receiving therearound an intermediate portion of... [a] flexible hose 21 which is disposed in a generally U-shaped configuration [around the moveable pulley 32]." McGaha, col. 5, lines 49-53.

It is respectfully asserted that, as compared to a U-shaped configuration of an intermediate portion of a flexible hose as disclosed in McGaha, the amended Claims recite an extension-retraction device (Claim 1), a tubing extension-retraction device (Claim 8), or tube-winding device (Claims 9 and 16) for winding (and unwinding) a coil of a portion of medical fluid tubing.

As distinguished from a U-shaped configuration of an intermediate portion of a flexible hose as disclosed in McGaha, Claim 1, as amended, for example, recites that "... the middle portion of the second portion of medical fluid tubing being wound as a coil around a portion of the medical fluid tubing extension-retraction device for uninterrupted fluid transport when the second portion of medical fluid tubing is in a fully retracted state"

Further, as distinguished from a U-shaped configuration of an intermediate portion of a flexible hose as disclosed in McGaha, Claim 8, as amended, for example, recites that "... the middle portion of the portion of medical fluid tubing is disposed in a

coil around a portion of the tubing extension-retraction device for uninterrupted fluid transport."

Yet further, as distinguished from a U-shaped configuration of an intermediate portion of a flexible hose as disclosed in McGaha, Claim 9, as amended, for example, recites that "... the middle portion of the first portion being disposed as a coil around the tube-engaging means for uninterrupted fluid transport when the first end of the first portion of medical fluid tubing is in a fully retracted state."

Further still, as distinguished from a U-shaped configuration of an intermediate portion of a flexible hose as disclosed in McGaha, Claim 16, as amended, for example, recites that "...wherein the middle portion of the portion of medical fluid tubing is disposed as a coil around the tube-engaging means for uninterrupted fluid transport when the telescoping pole is in a fully collapsed state, and wherein the coil of the middle portion of the portion of medical fluid tubing is at least partially unwound as the telescoping pole is at least partially telescoped to extend through the closable opening disposed in the top of the carrying case."

It is respectfully submitted that, as compared to the above-recited limitations of amended independent claims 1, 8, 9 and 16, the flexible hose 21 of McGaha is not wound as a coil around the McGaha extending and retracting mechanism. Rather, in McGaha, "... a cable 38" is wound around "a rotatable reel 36." McGaha, col. 5, lines 61-64. It is respectfully submitted that the wound cable is used in McGaha in extending and retracting the flexible hose 21. See, e.g., McGaha, col. 5, line 61 – col. 6, line 7.

That is, as compared to the limitations recited, for example, by amended Claims 1, 8, 9, and 16, it is respectfully asserted that McGaha does not disclose winding flexible tubing in a coil around any portion of the McGaha extending and retracting mechanism.

Further, as compared to the limitations "...for uninterrupted fluid transport" recited by amended independent Claims 1, 8, 9 and 16, it is respectfully asserted that the wound cable (element 36) of McGaha is not capable of transporting medical fluids.

It is respectfully asserted that various embodiments of the combination of the winding and unwinding of medical fluid tubing around a tube-winding/tube extension-retraction device, with a telescoping or collapsible pole, as recited in one way or another in each of amended independent Claims 1, 8, 9, and 16, would be useful over the

references of record, in a manner as explained in the Specification of the present application (the "*Specification*") with respect to an exemplary embodiment, as follows:

... tube winding/retraction device 8 would be provided to allow extension or retraction of tubing 9 – when telescoping pole 3 is fully extended, and/or when the carry case 12 is placed in a stationary position, such as on the ground next to a patient in a chair, tube winding/retraction device 8 would be used to unwind (extend) the tubing 9; when telescoping pole is fully collapsed, such as when the patient is carrying the carrying case 12, tube winding/retraction device 8 would be used to wind (retract) the tubing so that as much of it as possible would be concealed inside the carrying case 12.

Specification, p. 8, line 26 – p. 9, line 2.

Providing tube-winding/retraction device 8 would allow a patient to adjust the length of the IV tubing 9 to suit the patient's needs. For example, the IV tubing 9 could be retracted to a short length when the patient is carrying the carrying case 12 with the telescoping pole 3 in a collapsed state, such as is depicted, e.g., in FIG. 2. When the patient is sitting with, e.g., the carrying case 12 on the ground and extends telescoping pole 3, the patient would release the locking button 11 by pressing release button 30 so that the IV tubing 9 could be extended.

Specification, p. 12, lines 2-9.

It is respectfully asserted that the above-mentioned distinctions between amended Claims 1, 8, 9 and 16 of the present application (and therefore, between the Claims that are dependent on them) and the references of record are patentable. Therefore, it is respectfully asserted that Claims 1, 4-5, 8-16, and 18-23 are in condition for allowance.

Further, it is respectfully asserted that the Office Action did not cite, as required for an obviousness rejection under MPEP §§706.02(j) and MPEP §2143, any reference or combination of references, whether considered alone or in combination, that disclose, anticipate, teach or suggest the limitations of Claim 8 of "...a plurality of telescoping poles mounted to an exterior bottom of the carrying case"

Even so, Claim 8 has been amended to more distinctly claim the claimed invention; as amended, Claim 8 recites:

... a plurality of collapsible, telescoping poles mounted to the bottom of the carrying case, each collapsible telescoping pole of the plurality of collapsible, telescoping poles extendable to a fully telescoped state beyond the exterior bottom and each collapsible telescoping pole of the plurality of collapsible,

telescoping poles collapsible to a fully collapsed state completely within the carrying case ...

The Specification of the present application describes exemplary embodiments of the above-recited limitations of amended Claim 8, with reference to FIG. 5 of the present application, as follows:

... four identical telescoping legs 70 (two telescoping legs 70 are depicted in FIG. 5 – one fully expanded; one collapsed) would be provided. ... the telescoping legs 70 would be made out of a lightweight plastic or aluminum. ... a telescoping leg 70 would be inserted through each floor aperture 51, 52, 53, and 54 as depicted in FIG. 5 on the bottom 20 of the carrying case 12. ... Each of the four telescoping legs 70 would comprise a plurality of tubular members, e.g., 27, 26, 25, and 24 as depicted in FIG. 5. ... each telescoping leg 70 would be extended to raise carrying case 12 when such a raised position was preferred by the patient, such as when the patient wanted to remain in a stationary period for some time.

Specification, p. 14, line 18 – p. 15, line 6.

It is respectfully asserted that the above-mentioned distinctions between amended Claim 8 and the references of record are patentable. Therefore, it is respectfully asserted that Claim 8 is in condition for allowance.

Still further, it is respectfully asserted that the limitations recited by amended independent Claims 1, 8, 9 and 16 regarding a carrying case and the attachment of a telescoping pole to the bottom of the carrying case are distinguishable from the references of record. The Office Action refers to a carrying case, element 80, in Gawlik. As compared to element 80 of Gawlik, amended Claim 1, for example, recites:

a carrying case, the carrying case comprising:

 a compartment for completely encasing the fluid container, the medical fluid pump, the first portion of medical fluid tubing, the second portion of medical fluid tubing, and the collapsible, telescoping pole when the collapsible, telescoping pole is in a completely collapsed state,

 an interior floor connected to the base of the collapsible, telescoping pole, and

 an aperture through which the second end of the second portion of medical fluid tubing extends.

Similarly, amended Claim 8 recites limitations that are distinguishable from element 80 of Gawlik, as follows:

a carrying case comprising a compartment, the compartment comprising an interior floor, the carrying case comprising a bottom and an exterior bottom;

a plurality of collapsible, telescoping poles mounted to the bottom of the carrying case, each collapsible telescoping pole of the plurality of collapsible, telescoping poles extendable to a fully telescoped state beyond the exterior bottom and each collapsible telescoping pole of the plurality of collapsible, telescoping poles collapsible to a fully collapsed state completely within the carrying case;

a stationary pole mounted to the interior floor of the carrying case, said stationary pole comprising a means for suspending a medical fluid container;

Similarly, amended Claim 9 recites limitations that are distinguishable from element 80 of Gawlik, as follows:

a carrying case comprising an interior floor and a closable opening disposed in the top of the carrying case; ...

a collapsible stand disposed within the carrying case, the collapsible stand comprising a base that is connected to the interior floor of the carrying case, ...

Similarly, amended Claim 16 recites limitations that are distinguishable from element 80 of Gawlik, as follows:

a carrying case comprising a bottom and a closable opening disposed in the top of the carrying case;...

a telescoping pole fastened within the carrying case to the bottom of the carrying case, the telescoping pole comprising a top, wherein the top of the telescoping pole comprises a suspension means for suspending the pump and the fluid container, the telescoping pole comprising a plurality of telescoping subpoles for being extended through the closable opening disposed in the top of the carrying case during stationary use, and for being collapsed within the carrying case during ambulatory use;...

a portion of medical fluid tubing for uninterrupted transport of medical fluids, the portion of medical fluid tubing comprising ... a middle portion, ...

wherein the middle portion of the portion of medical fluid tubing is disposed as a coil around the tube-engaging means for uninterrupted fluid transport when the telescoping pole is in a fully collapsed state, and wherein the coil of the middle portion of the portion of medical fluid tubing is at least partially unwound as the telescoping pole is at least partially telescoped to extend through the closable opening disposed in the top of the carrying case.

For the above-given reasons, it is respectfully asserted that the claimed combinations of elements recited by amended independent Claims 1, 8, 9 and 16, and therefore the Claims that are dependent on them, are not disclosed, anticipated, taught or suggested by the references of record, and that, therefore, those Claims are in

condition for allowance. Cf. e.g., *In re Mahurkar Patent Litigation*, 831 F. Supp. 1354, 1375, 28 U.S.P.Q.2d (BNA) 1801, 1817 (N.D. Ill. 1993), aff'd, 71 F.3d 1573, 37 U.S.P.Q.2d 1138 (Fed. Cir. 1995) (Opinion by Judge Easterbrook; "Unless the prior art itself suggests the particular combination, it does not show that the actual invention was obvious or anticipated."). "With hindsight the transistor is obvious; but devising the transistor was still a work of genius. An invention lies in a combination of elements that are themselves mundane. 'Virtually all inventions are combinations and virtually all are combinations of old elements.'" *Id.* (citing *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698 (Fed. Cir. 1983)).

CONCLUSION

In view of the foregoing amendments, and for the foregoing reasons and authorities, it is respectfully submitted that the invention disclosed and claimed in the amended Claims of the present amended application is not fairly taught by any of the references of record, taken either alone or in combination, and that the application is in condition for allowance. Accordingly, Applicant respectfully requests reconsideration and allowance of Claims 1, 4-5, 8-16 and 18-23.

Respectfully submitted,

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